

TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

**Minutes
November 16, 2007
1:30 p.m.**

The regular meeting of the Tennessee Alcoholic Beverage Commission was held on Thursday, August 23, 2007 in Nashville, Tennessee at 1:30 p.m. Chairman John Jones, Commissioner Cynthia Bond and Commissioner Harlan Mathews were present. Executive Director Danielle Elks, Assistant Director Carolyn Smith, ASAC Andy Woodall, SA Debra Warren and SA Brad Allison were present.

1. **The Minutes for October 19, 2007 Commission Meeting were approved.**

Chairman Jones stated that Executive Director Elks is required to leave shortly and attend to other TABC business. Therefore, Chairman Jones changed the agenda and requested Director Elks to address any questions the federal agency has had with the TABC within the past two weeks.

Director Elks stated a local newspaper story reported that the TABC was investigated by the Federal TT&B (Alcohol, Tobacco, Tax and Trade Bureau, formerly ATF) related to a newspaper article implying a close relationship between the TABC and the wholesalers. Director Elks stated that the story was inaccurate. Director Elks stated that the TT&B was present at agency offices for two reasons: (1) to be briefed in the 2800 bottle seizure of Jack Daniels' and (2) to determine if any of the violations by wholesalers as investigated by the TABC would constitute federal violations as well.

2. **OLD BUSINESS:**

- A. **WHOLESALE**

**DBI BEVERAGE
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

**Applicant: DBI Beverage Memphis, Inc.
Stockholders: David Ingram**

Before the Commission is a request for a new wholesaler license to be located at 5020 Tuggle Road in Memphis Tennessee. DBI Beverage Memphis, Inc. is a Tennessee licensed beer distributor. Tennessee statutes allow wholesale licensees to sell other product and conduct other business—as long as the sale of alcoholic beverages constitutes 51% of the gross sales. All documentation has been submitted with the exception of the business:

- a. Lease from Ingram Entertainment Holdings, Inc. to the applicant;
- b. Updated Use and Occupancy permit;
- c. TABC Inspection;
- d. Acknowledgment of the rules and regulations;
- e. Acknowledgement of the “50% rule”

Discussion/Action Taken:

Assistant Director Smith reviewed the application to the Commissioners. Chairman Jones requested to defer the matter to the end of the meeting so Director Elks could inform the Commission of what issues the establishment still needs to complete.

Director Elks stated that the staff has not received additional information from DBI Beverage Memphis, Inc. She stated that DBI Beverage Memphis, Inc. is a beer wholesaler permittee. Director Elks stated that wholesalers can conduct other business up to 49% of the business other than alcoholic beverages; however, the statute specifically sets forth that the sale of beer may not constitute the “other business”. Therefore, DBI Beverage Memphis, Inc. cannot qualify for a wholesale license. Director Elks stated that another corporate entity must hold the license suggesting that the applicant could modify their application and be in compliance. Director Elks stated that until the application is amended, she could not recommend approval. She suggested that the Commission did not have to take action at this point because the wholesaler does not have a complete application. Director Elks stated that if the wholesaler applicant will submit a complete and accurate application, she would place them on the December agenda.

3. NEW BUSINESS

RETAIL

**A. THE VINE AT GREENLIFE
CHATTANOOGA, TN (HAMILTON COUNTY)**

Applicant: The Vine at Greenlife, LLC
Members: Catherine Pruett

Before the Commission is a request for a new retail store to be located at 417 Spring Street in Chattanooga, Tennessee. Ms. Catherine Pruett intends to initially invest approximately \$50,000, and operate the business as a LLC. She would be the sole member. Financing is based upon personal savings. The LLC is sub-leasing the property from Greenlife Grocery, LLC, and the landlord is Park Mills 2, LLC. The month rent is \$34,915 and increases over the fifteen year term of the lease to

\$37,242. All documentation has been submitted with the exception of the following:

- a. Use and Occupancy permit; and
- b. Landlord's permission to sub-lease.

Discussion/Action Taken:

Assistant Director Smith reviewed the application to the Commissioners and stated that the formula for the rent is based upon the Mall lease and the percentage for The Vine at Greenlife is \$1,000 per month and Assistant Director Smith recommended approval upon submission of the Use and Occupancy permit and Landlord's permission to sub-lease. Chairman Jones made a motion to approve upon submission of the pending documentation. Commissioner Mathews seconded the motion and it passed with 2 ayes.

**B. FOREST HILL WINE MERCHANTS
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

Applicant: Oates Investments, LLC

**Members: Latham Oates, Burkitt Oates, Stephen Poole, Daniel
Mack Oates, Jr. and Paula Oates**

Before the Commission is a request for a new retail store to be located at 9087 Poplar, Suite 101, in Memphis, Tennessee. If approved, this business would be operated as an LLC. The percentage of ownership would be as follows based upon the referenced investment: Latham Oates (57.14%) \$200,000—personal funds; Burkitt Oates and Stephen Poole (28.57%) \$100,000 total—personal funds; and Daniel Mack Oates, Jr. and Paula Oates (14.29%) \$50,000 total—personal funds. All documentation has been submitted with the exception of the following:

- a. Certificate of Compliance for each member (not just LLC)
- b. TABC Inspection;
- c. Use and Occupancy permit.

Discussion/Action Taken:

Latham Oates was present at the meeting. Assistant Director Smith reviewed the application to the Commissioners and recommended approval upon submission of the TABC Inspection and the Use and Occupancy permit. Commissioner Bond made a motion to approve. Commissioner Mathews seconded and the motion passed with 3 ayes.

**C. MY 4TH HABIT
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

Applicant: My 4th Habit, LLC
Members: LuAnn Nordstrom

Before the Commission is a request for a new retail store to be located at 215 S. Pauline, Suite 102, in Memphis, Tennessee. If approved, this business would be operated as a LLC, and LuAnn Nordstrom will be the sole member. She intends to initially invest \$75,000-\$100,000. Financing is based upon existing personal funds. She is leasing the property from Scharff, LLC for \$1250/month for five years. (Ms. Nordstrom operates a convenience store under the name 3 Habits, LLC. Original documentation was submitted reflecting this name. Ms. Nordstrom is in the process of changing all documentation to the new LLC.) All documentation has been submitted with the exception of the following:

- a. Lease, application and sales tax amended to reflect proper name;
- b. TABC Inspection;
- c. Use and Occupancy permit.

Discussion/Action Taken:

Assistant Director Smith reviewed the application to the Commissioners and stated that all documentation had been received by the staff and recommended approval. Commissioner Bond made a motion to approve. Commissioner Mathews seconded the motion and it passed with 3 ayes.

**D. YN WINE
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

Applicant: YN, Inc.
Stockholder: Ed Fryer, III

Before the Commission is a request for a new retail store to be located at 4025 Hillsboro Road in Nashville, Tennessee. If approved, Mr. Ed Fryer intends to initially invest \$150,000 and operate the business as a corporation; he would be the sole stockholder. Financing is based upon personal funds, and a \$50,000 loan with Bancorpsouth Bank. The applicant is leasing the premises from Hill Center at Green Hills, LLC, for a period of ten years, with the monthly rent beginning at \$4938.50 and increasing to \$5,519.50. All documentation has been submitted with the exception of the following:

- a. All questions answered on questionnaire;
- b. TABC Inspection;
- c. Use and Occupancy permit;
- d. Acknowledgment of the rules/regulations.

Discussion/Action Taken:

Wesley Turner, attorney, and Ed Fryer, III, were present at the meeting. David Briley, attorney, was also present at the meeting. Director Elks stated that Ed Fryer's wife, Virginia Fryer, owns another retail package store (The Wine Shoppe at Green Hills) approximately 3 blocks from YN Wine. The issue with YN Wine store is that Mr. Fryer has been working at The Wine Shoppe at Green Hills for a period of 10 years. Director Elks stated that she has met with Dan Haskell, attorney, and Ed Fryer prior to the issuance of the application—specifically informing Mr. Fryer that two retail package stores cannot be operated in conjunction with each other. Mr. Fryer has submitted an affidavit that sets forth that he is aware of these provisions, and understands the prohibitions.

Director Elks stated that the staff has received opposition to this store from David Briley, attorney for PBL, Inc., d/b/a as Bud's Liquor—a retail store in close proximity to the proposed site of YN Wine, Inc. David Briley stated that his client felt that the application should be denied for the following reasons: First, Ed Fryer is an indirect operator of The Wine Shoppe at Green Hills. David Briley stated that Ed Fryer has been the manager of The Wine Shoppe Green Hills since its inception. David Briley stated that when Virginia Fryer submitted the application for The Wine Shoppe at Green Hills in 2000, they listed jointly held assets as the requisite financial capacity to open YN Wine, Inc. David Briley stated that when Ed Fryer submitted the application for the YN Wine, Inc., they have listed jointly held assets as the basis of the financial capacity to open the second retail package store. David Briley stated that even after signing the affidavit that he remains as a party to the lease between The Wine Shoppe at Green Hills and its landlord. David Briley stated that legally Ed Fryer is going to be held personally responsible for the debts of The Wine Shoppe at Green Hills. David Briley stated that an affidavit cannot overcome a legal obligation that is set up contractually between a third party and Mr. Fryer.

Second, that he believed that the retail package store is not going to be located on a public street. David Briley stated that the mall does confront a public street, but YN Wine faces a private street. David Briley stated the law requires a retail package store to face a public street.

Director Elks stated that Mr. Ed Fryer would have to be removed from The Wine Shoppe at Green Hills lease, as a personal guarantor or signatory on the lease. Director Elks stated that the TABC inspection has

not been conducted and therefore is not sure if the retail package store faces a public or private street. Director Elks stated that that would be determined with the inspection.

Mr. Wesley Turner then provided the staff with a copy of the amended lease reflecting that Mr. Ed Fryer has been released as a guarantor from the lease of The Wine Shoppe at Green Hills.

Mr. David Briley stated that Ed Fryer has submitted an affidavit to the staff that Ed Fryer intends not to run The Wine Shoppe at Green Hills, but there has not been an affidavit submitted by Mrs. Virginia Fryer of her intent to manage The Wine Shoppe at Green Hills.

Chairman Jones made a motion to approve the application upon submission of the pending documentation. Commissioner Bond seconded the motion. Commissioner Mathews opposed the motion. The motion passed with 2 ayes.

At the end of the commission meeting Commissioner Mathews made a motion that he wanted to be allowed to retract his vote where he had earlier voted no to pass. Chairman Jones seconded the motion and stated that it does not change the outcome of the previous decision and it passed with 3 ayes.

**E. VICTORY VILLAGE LIQUOR AND WINE
MURFREESBORO, TENNESSEE (RUTHERFORD COUNTY)**

Applicant: Jai Varahi Mata, Inc.
Stockholder: Ankit Patel

Before the Commission is a request for a new retail store to be located at 4167 Franklin Road, Suite 4-5A in Murfreesboro, Tennessee. If approved. Mr. Patel intends to initially invest \$85,000 and operate the business as a corporation with himself as the sole stockholder. Financing is based upon personal funds. Applicant is leasing the property from Barclay Victory Partners, LLC for a period of 5 years (with a five year option), with monthly payments beginning at \$5,775 and increasing to \$6300. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Use and Occupancy Permit;
- c. Acknowledgement of the Rules/regulations; and
- d. Acknowledgement that spouse can have no interest in other liquor licenses.

Discussion/Action Taken:

Assistant Director Smith reviewed the application to the Commissioners and recommended approval upon submission of the pending documentation. Commissioner Mathews made a motion to approve upon submission of the pending documentation. Chairman Jones seconded the motion and it passed with 3 ayes.

4. WHOLESALE

**A. 100% ITALIANO, INC.
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

Applicant: 100% Italiano, Inc.
Stockholder: Maria Pia De Pasquale

Before the Commission is a request for a new wholesale business to be located at 325 Plus Park Boulevard, Suite 203 in Nashville, Tennessee. Ms. DePasquale intends to initially invest \$100,000 in the business, and if approved, operate the business as a corporation. Financing is based upon personal savings. Applicant is leasing the property from Charles Reed for a period of one year at \$300 per month. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgment of the rules/regulations;
- c. Written consent of SWI to sub-lease.

Discussion/Action Taken:

Charles Reed, attorney, was present at the meeting. Assistant Director Smith reviewed the application to the Commissioners and recommended approval upon submission of the TABC Inspection and Acknowledgment of the rules and regulations. Commissioner Mathews made a motion to approve upon submission of the pending documentation. Commissioner Bond seconded the motion and it passed with 3 ayes.

5. MANUFACTURER

**A. HARDY BOTTLING COMPANY
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

Applicant: Chism Hardy Enterprises, LLC
Members: Carolyn Hardy

Before the Commission is a request for a new manufacturer's license to be located at 5151 E. Rames Road in Memphis, Tennessee. The applicant is applying under T.C.A. §57-3-202(g)(1), which does not require a referendum to be conducted allowing the manufacturer of alcoholic beverages. If approved, the applicant will invest approximately \$13 million dollars, of which \$6.5 million is a loan with Sandhurst Asset Management Company, and the remaining is a loan with First Capitol. The applicant owns the property where the business will be located. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Payment of outstanding taxes;
- c. Use and Occupancy permit; and
- d. Acknowledgement that the applicant meets the requirements of T.C.A. §57-3-202(g)(1).

Discussion/Action Taken:

Assistant Director Smith reviewed the application to the Commissioners and recommended approval upon submission of the TABC Inspection, Use and Occupancy permit, payment of outstanding taxes and Acknowledgment that the applicant meets the requirements of T.C.A. §57-3-202(g)(1). Commissioner Bond made a motion to approve upon submission of the pending documentation. Commissioner Mathews seconded the motion and it passed with 3 ayes.

6. ADMINISTRATIVE CITATIONS

Continued from October, 2007 meeting

A. JOSEPH HENLEY

On September 22, 2007, TABC Agent Brad Allison observed the Respondent serve and sell an alcoholic beverage to the nineteen year-old confidential operative at the establishment doing business as PM. The Respondent did not check the minor's identification. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

Assistant Director Smith stated that Joseph Henley has paid the administrative citation; so therefore, no action is necessary.

B. DAVID SAYLORS

On September 21, 2007, TABC Agent Brad Allison observed the Respondent serve and sell an alcoholic beverage to the nineteen year-old confidential operative at the establishment doing business as Outback. The Respondent did not check the minor's identification. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

Assistant Director Smith stated that David Saylor has paid the administrative citation; so therefore, no action is necessary.

C. JESSICA ST. CLAIR

On September 21, 2007, TABC Agent Debra Warren observed the Respondent serve and sell an alcoholic beverage to the nineteen year-old confidential operative at the establishment doing business as Mafiaoz's. The Respondent did check the minor's identification, but sold the alcoholic beverage to the minor. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

Assistant Director Smith stated that Jessica St. Clair has paid the administrative citation; so therefore, no action is necessary.

New:

A. SAMMANtha HAYES - On October 19, 2007, TABC Agent Brad Allison observed the Respondent serve and sell an alcoholic beverage to a nineteen year-old confidential operative at the establishment doing business as O'Charley's #236 in Clarksville. The Respondent checked the minor's identification and served him anyway. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

Sammantha Hayes was present at the meeting. Special Agent Brad Allison was present at the meeting. SA Brad Allison testified that on October 19, 2007 that his 19 year old confidential informant went to the bar area. SA Allison testified that he also went to the bar area across from the confidential informant while the informant ordered the Jack and Coke from the bartender. She asked for his ID and she looked at his ID for approximately 2 or 3 seconds, returned him his ID and proceeded to make the informant the drink and provided the drink to him. SA

Allison testified that after the minor left, he went over and took control of the alcoholic beverage and showed his ID to Sammantha Hayes and wrote her a citation for sale to a minor.

Sammantha Hayes stated that she thought the confidential informant's ID said "1986". Sammantha Hayes did acknowledge that she served the informant the alcoholic beverage. Sammantha Hayes testified that she will pay the administrative citation, but she could not pay the administrative citation today. Assistant Director suggested that the matter be continued to the December Commission meeting. Assistant Director Smith stated that if the administrative citation is paid before the December meeting, then Ms. Hayes would not have to come to the next meeting. Assistant Director Smith stated that if the citation has not been paid by the December meeting, then the matter would be placed on the December agenda and Ms. Hayes will have to be at the December meeting if she wanted to be heard. Commissioner Mathews made a motion to defer the matter to the December meeting. Commissioner Bond seconded the motion and it passed with 3 ayes.

B. LYNDA ESQUILIN - On October 19, 2007, TABC Agent Brad Allison observed the Respondent serve and sell an alcoholic beverage to a nineteen year-old confidential operative at the establishment doing business as Club Tropicana in Clarksville. The Respondent checked the minor's identification and served him anyway. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

Lynda Esquilin was not present. SA Brad Allison testified that he sent in a 19 year old confidential informant into the establishment. SA Allison testified that he went into the establishment before the minor entered. SA Allison testified that the informant went in a few seconds behind him. SA Allison testified that Lynda Esquilin checked his ID, as well as the minor's ID at the door when he came in. Ms. Esquilin went behind the bar area and continued to serve drinks to the customers that were already in the bar area. The minor ordered a Jack Daniels and coke from her. She got the drink and presented it to the minor. SA Allison testified that, at that point, he took the drink and showed his ID to Lynda Esquilin and wrote her an administrative citation for sale to a minor.

Assistant Director recommended that the Commission uphold the administrative citation and the \$250.00 fine and the suspension of the permit for 90 days.

Commissioner Mathews made a motion to approve the recommendation of the staff. Commissioner Bond seconded the motion and it passed with 3 ayes.

- C. **OSIEL BOYZO** - On October 10, 2007, TABC Agent Heidi White observed the Respondent serve and sell a bottle of beer to an underage Knoxville Police Department cadet at the establishment doing business as El Mezcal Mexican Restaurant in Knoxville. The Respondent checked the minor's identification and served him anyway. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

Assistant Director Smith stated that SA Heidi White was not present at the meeting and requested that the administrative citation be dismissed. Commissioner Bond made a motion to dismiss the administrative citation. Commissioner Mathews seconded the motion and it passed with 3 ayes.

- D. **TONYA STIVERS** - On October 10, 2007, TABC Agent Heidi White observed the Respondent serve and sell a bottle of beer to an underage Knoxville Police Department cadet at the establishment doing business as Gondolier Italian Restaurant in Farragut. The Respondent checked the minor's identification and served him anyway. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

Assistant Director Smith stated that SA Heidi White was not present at the meeting and requested that the administrative citation be dismissed. Commissioner Mathews made a motion to dismiss the administrative citation. Commissioner Bond seconded the motion and it passed with 3 ayes.

- D. **ANITA HENSHAW** - On October 10, 2007, TABC Agent Heidi White observed the Respondent serve and sell a bottle of beer to an underage Knoxville Police Department cadet at the establishment doing business as Restaurant Linderhof in Farragut. The Respondent checked the minor's identification and served him anyway. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

Assistant Director Smith stated that Anita Henshaw has paid the administrative citation; so therefore, no action is necessary.

- F. **KRISTEN HANSEN** - On October 10, 2007, TABC Agent Heidi White observed the Respondent serve and sell an alcoholic beverage to an underage

Knoxville Police Department cadet at the establishment doing business as Season's Café in Farragut. The Respondent did not check the minor's identification before serving him. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

Assistant Director Smith stated that SA Heidi White was not present at the meeting and requested that the administrative citation be dismissed. Commissioner Bond made a motion to dismiss the administrative citation. Commissioner Mathews seconded the motion and it passed with 3 ayes.

- G. DAVIS PAINE** – On October 10, 2007, TABC Agent Heidi White observed the Respondent serve and sell a malt beverage to an underage Knoxville Police Department cadet at the establishment doing business as Ruby Tuesday in Alcoa. The Respondent did not check the minor's identification before serving him. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

Assistant Director Smith stated that David Paine has paid the administrative citation; so therefore, no action is necessary.

- H. GEORGE RUSSELL** - On October 10, 2007, TABC Agent Heidi White observed the Respondent sell an alcoholic beverage to an underage Knoxville Police Department cadet at the establishment doing business as Dixie Lee Liquors. The Respondent did not check the minor's identification before serving him. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

Assistant Director Smith stated that George Russell has paid the administrative citation; so therefore, no action is necessary.

- I. ALICIA FLETCHER** On October 10, 2007, TABC Agent Heidi White observed the Respondent serve and sell a malt beverage to an underage Knoxville Police Department cadet at the establishment doing business as Texas Roadhouse in Alcoa. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

Assistant Director Smith stated that Alicia Fletcher has paid the administrative citation; so therefore, no action is necessary.

K. CHRISTOPHER LONG On October 10, 2007, TABC Agent Heidi White observed the Respondent serve and sell a malt beverage to an underage Knoxville Police Department cadet at the establishment doing business as Chili's Bar and Grill in Alcoa. The Respondent did check the minor's identification before serving him, but sold the alcoholic beverage to the minor. An administrative citation was issued, and remains unresolved at the time of this agenda.

Discussion/Action Taken:

Assistant Director Smith stated that Christopher Long has paid the administrative citation; so therefore, no action is necessary.

7. **BUDGET**
8. **CONSENT ORDERS**
9. **PENDING MATTERS LIST**
10. **MISCELLANEOUS**
11. **DATE OF NEXT MEETING** – Thursday, December 20, 2007 and Wednesday, January 16, 2008 at 1:30 p.m.

There being no further business the meeting was adjourned.

John A. Jones
Chairman

Shari Danielle Elks
Executive Director